

U.S. Patent Application No. 09/914,752
Amendment dated February 9, 2004
Amendment and Response to First Office Action of October 9, 2003

REMARKS/ARGUMENT

The First Office Action, dated October 9, 2003 has been carefully considered. Accordingly, the changes presented herewith, taken with the following remarks, are believed sufficient to place the present claims in condition for allowance. Reconsideration and allowance of all remaining claims is respectfully requested.

Status Of The Claims

In the present amendment, Claim 36 has been canceled. Claims 1, 24, 27, 28, 32, 33, 35, 37, 45, 48, and 50 have been amended to correct Markush language or to further clarify the subject matter claimed. Claim 1 has been amended to incorporate the language of canceled Claim 36. Claim 27 has been amended to include water-soluble salts (for basis see specification, page 21, lines 16-26). Claims 48 and 50 incorporate the language of Claim 44. Claims 2-23 were previously canceled. Claims 1 and 24-35, and 37-53 are now pending in this application.

Formal Matters

There were no objections to the claims in the First Office Action.

Rejection Under 35 U.S.C. § 112

1) Claims 24, 27, 28, 32, 35, and 50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for having improper Markush language.

The Applicants submit that the amendments to Claims 24, 27, 28, 32, 35, and 50 obviate this rejection. As such, the Applicants request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 103(a)

1) Claims 1, 24-29, 33, 36-43, and 45-52 are rejected by the Examiner under 35 U.S.C. § 103(a) as allegedly defining obvious subject matter over Blasey et al. (DE 19710254 or the English translation of this reference U.S. Pat. No. 6,506,720) hereinafter "Blasey," for reasons of record at pages 3-4 of the First Office Action.

The First Office Action (Paper 6) concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare a heterogeneous detergent tablet

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having several layers and comprising cogranulates of polyacrylic acid and inorganic carrier in their optimum proportions because the Office Action asserts that the teachings of Blasey encompass these ingredients and proportions. The Applicants kindly disagree.

It is basic patent law that the rejections of the present invention under 35 U.S.C. §103 must comport with the classic standard set forth in *Graham v. John Deere Company* 383 US 1, 148 USPQ 459 (1966), codified in MPEP Section 706. The mere fact that the prior art may be modified as suggested by the Patent Office does not make the modification obvious unless the prior art suggests the desirability of the modification. See *In re Fritch* 922 F2d 1260, 23 USPQ 2d 1780 (Fed. Cir.1992).

Claim 1, as amended, of which Claims 24-29, 33, 37-43, and 45-47 directly or ultimately depend, is directed to a multi-phase detergent tablet for use in a washing machine, the tablet comprising a first phase in adhesive contact with one or more second phases, wherein at least the first phase is in the form of a compressed particulate solid incorporating a cogranulated detergency additive composition comprising polymeric polycarboxylate and inorganic carrier, and wherein at least one second phase is in the form of a compressed particulate solid and the first phase is formed by compression at a pressure greater than that of the second phase.

The Office Action admits that Blasey fails to specifically disclose a multi-phase tablet comprising co-granulated disintegrating agent comprising polymeric carboxylate and inorganic carrier in the amounts as those recited. The Applicants submit that there is no motivation or suggestion in Blasey to provide a multi-phase tablet comprising a co-granulated disintegrating agent comprising polymeric carboxylate and inorganic carrier having at least one second phase having been formed from a pressure less than that of the first phase, as is presently claimed.

It is well settled that to support a rejection under 35 U.S.C. § 103, a reference must provide an enabling disclosure, i.e., it must place the claimed invention in the possession of the public. *In re Payne*, 203 U.S.P.Q. 245 (CCPA 1979). The Blasey disclosure does not enable the formation of multi-phase tablets, comprising a cogranulated disintegrating agent comprising polymeric carboxylate and inorganic carrier nor a heterogeneous tablet having two phases compressed at different compression pressures as set forth in Claim 1, as amended. It is therefore submitted that the rejection over this reference on Claims 1, 24-29, 33, 37-43, and 45-47 should be reconsidered and withdrawn.

With respect to Claims 48-52, the Office Action asserts these claims are also non-obvious since the disintegrating agents in granular form or in co-granulated form or disintegrator granules in Blasey are understood to include any disintegrating agents which are present per se in the form of

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fine-particle powders and which have been converted into coarser particles by spray drying, granulation, agglomeration, compacting, pelleting or extrusion. The Applicants kindly disagree.

Claim 48, as amended, of which Claims 49 directly depends, is directed in part, to a method of making a cogranular detergency additive composition comprising admixing a liquid feed comprising a polymeric polycarboxylate with a powder feed comprising inorganic carrier in the form of a powder or mixture of powders...wherein the powder feed comprises a mixture of alkali metal carbonate and alkali metal sulfate in a weight ratio of from about 3:1 to about 1:3.

Claim 50, as amended, of which Claims 51-52 are directed in part, to a cogranulated detergency additive composition comprising an inorganic carrier in the form of a powder or mixture of powders...wherein the powder comprises a mixture of alkali metal carbonate and alkali metal sulfate in a weight ratio of from about 3:1 to about 1:3.

As stated above, the Office Action admits that Blasey fails to teach a multi-phase tablet comprising cogranulated disintegrating agent comprising polymeric carboxylate and inorganic carrier comprising a mixture of alkali metal carbonate and alkali metal sulfate in the amounts recited. In light of the foregoing, Applicants respectfully submit that Claims 48 and 50, as amended, are not rendered obvious over Blasey because the reference fails to teach each and every element. MPEP 2143.03. Further, Applicants also submit that Claims 49 and 51-52, which ultimately depend on Claims 48 and 50, respectively, are also not rendered obvious over Blasey. Thus, reconsideration and withdrawal of the rejection is respectfully requested.

2) Claims 50-53 are rejected by the Examiner under 35 U.S.C. § 103(a) as unpatentable over Delwel et al. (WO 95/200030), hereinafter "Delwel," for reasons of record at pages 5 of the First Office Action.

The Office Action asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to reasonably expect the inorganic compounds of Delwel to have a particle size within those recited because the resulting "co-granules" having a particle size from about 100 to about 1500 microns would have been derived from particles smaller than the resulting "co-granules." The Applicants respectfully traverse this rejection.

In determining the obviousness of the claimed invention the court must look to the teachings of the prior art as a whole. The courts have ruled in the case of *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984) that a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.

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Although Delwel appears to broadly disclose a particle size from about 100 to about 1500 microns, on the whole Delwel admits that the particle size is not critical (Delwel, page 13, lines 15-16). Delwel discloses a preference for "co-granules" having an average particle size of from about 300 to about 900 microns especially from about 500 to about 700 microns (Delwel, page 15, lines 15-28). This preference is exemplified in each and every one of the Delwel examples that disclose a "co-granular" particle size. Unlike, Delwel, the Applicants have found that particle sizes are very important to the performance of the compositions of the present compositions, especially for precursor constituents, like the inorganic carrier. Specifically, the Applicants have found, among other factors, that a cogenerated disintegrating agent comprising an the inorganic carrier in the form of a powder, or mixture of powders, having a weight-average particle size of less than about 200 μ m provides for optimum granulometry, tablet strength, inter-phase adhesivity, and solubility characteristics (see specification, page 4, lines 21-25; page 5, lines 32-35; page 6, lines 12-22; page 7, line 27 through page 28, line 16).

It should be pointed out that Delwel, like the Applicants, discloses tablet strength (Delwel, page 13, lines 15-28) and solubility concerns (see Delwel, page 25, lines 25-30). In fact, Delwel actually performed several tablet strength tests (see Delwel, pages 27-29), and yet Delwel simply discloses that "co-granules" with an average particle size of from about 300 to about 900 microns are preferred.

From a close reading of Delwel, it appears that Delwel is equally unconcerned about the particle size of its "co-granular" precursor constituents. Specifically, Delwel is silent on precursor constituents with respect to particle sizes. It is well known that [t]he mere fact that the prior art may be modified as suggested by the Patent Office does not make the modification obvious unless the prior art suggests the desirability of the modification. See *In re Fritch* 922 F2d 1260, 23 USPQ 2d 1780 (Fed. Cir.1992). Yet, the Office Action bases its rejection on the premise that "co-granules" of Delwel would have been derived from smaller particles (i.e. precursor constituents) within the range claimed by the Applicants. The Applicants submit that since Delwel fails to teach that particle size is important anywhere in the reference with respect to performance optimums, it would be improper to base an obviousness rejection on what could have been done without a suggestion as to the desirability of the particle size modification of specific precursor constituents themselves. Since it has already been shown that Delwel discloses that particle size is not critical, it is just as likely that from a close reading of the Delwel disclosure that one skilled in the art would provide an inorganic carrier (or precursor constituent) having a weight-average particle size that is actually greater than about 200 μ m, and therefore rightfully falls outside the range claimed by the Applicants.

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It is well settled that the question of obviousness under 35 U.S.C. §103 is not what the artisan could have done, but rather what would have been obvious for such a person to do. See *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 1 U.S.P.Q. 2d 1081 (Fed. Cir. 1986). Since Delwel looked at performance concerns (e.g. tablet strength and solubility) and performed actual tests to show performance optimums, Delwel chose not to teach or suggest an optimal weight-average particle size of its precursor constituents in the disclosure regarding its "co-granular" particle formation.

Therefore, the Applicants respectfully submit that Claims 50-53 are not obvious over Delwel and are therefore patentable. Reconsideration and withdrawal of the rejection is respectfully requested.

3) Claims 30-32, 34-35 and 44 are rejected by the Examiner under 35 U.S.C. § 103(a) as unpatentable over Blasey as applied to the above claims, further in view of Delwel for reasons of record at page 6 of the First Office Action.

For the reasons and case law stated above, Blasey is not a proper reference as there is no teaching or suggestion of the cogranulated disintegrating agent as presently claimed. Specifically, Blasey is silent on a multi-phase tablet comprising cogranulated disintegrating agent comprising polymeric carboxylate and inorganic carrier in the amounts as those recited, and such a tablet having at least one second phase having been formed from a pressure less than that of the first phase. The Delwel reference does not correct the deficiencies of Blasey because Delwel, like Blasey, is silent on a multi-phase detergent tablet being formed with different compression pressures. The Applicants respectfully submit that Claim 1, as amended, from which Claims 30-32, 34-35 and 44 directly or ultimately depend, is not obvious over Blasey alone, or in combination with Delwel, and is therefore, patentably distinguishable therefrom. Thus, Claims 30-32, 34-35 and 44 are also patentably distinguishable over Blasey alone, or in combination with Delwel. Reconsideration and withdrawal of the rejection is respectfully requested.

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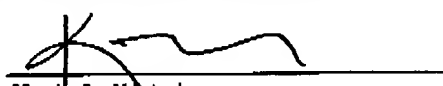
CONCLUSION

It is believed that the above represents a complete response to the rejections under 35 U.S.C. §§ 112 and 103(a), and places the present application in condition for allowance. Reconsideration and an early allowance are requested.

Respectfully submitted,

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